



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-782

Appeal P-9300399

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested from the Ministry of the Solicitor General and Correctional Services (the Ministry) records relating to an investigation into allegations of sexual harassment against him. The investigation was conducted by the Ministry's Independent Investigations Unit. The appellant is a Probation and Parole Officer and the complaint to which the records relate was made against him by a client (the complainant).

The Ministry granted partial access to the investigation report. It denied access to an attached transcript of a statement given by a witness in the investigation (the witness). The Ministry relies upon the following exemption to deny access to the information withheld from the records:

- invasion of privacy - section 49(b).

A Notice of Inquiry was provided to the Ministry, the appellant and the witness. The complainant was also notified of the appeal. Representations were submitted by or on behalf of all of these parties.

The records consist of the severed portions of a six-page final investigation report, dated April 27, 1993, and a two-page transcript of the statement given by the witness.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I find that both records contain the personal information of the appellant, the complainant and other individuals. The witness states that she gave her statement in her professional capacity and therefore it does not contain her personal information. I agree that the statement does not contain the personal information of the witness.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access. Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals, the Ministry must weigh the requester's right to his/her own personal information against the privacy interests of other individuals. If the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy.

In its representations, the Ministry cites the following provisions which, if applicable, weigh in favour of privacy protection:

- the information is highly sensitive - section 21(2)(f)
- the information was supplied in confidence - section 21(2)(h).

The complainant's representations refer to these factors as well.

The appellant's representations state that he needs the information as he has never been made aware of the exact nature of the allegations and that the information is necessary to clear his name. By inference, the appellant is raising section 21(2)(d) (fair determination of his rights).

Having reviewed the representations and the records, I have made the following findings:

- (1) Many past orders have indicated that some information in connection with harassment investigations is highly sensitive within the meaning of section 21(2)(f), and that some information collected in the context of such investigations was provided in confidence within the meaning of section 21(2)(h). However, it has also been found that it is not possible for such an investigation to proceed if the complaint is not made known to the person complained against (in this case, the appellant), and the direct response to the allegations made in the complaint is not made known to the complainant (Orders M-82 and P-685). In addition, where, as in this case, the investigation has been completed, it is essential that the parties (including the appellant) be advised of how the complaint was resolved and why (Order P-694).

In my view, in the circumstances of this appeal, sections 21(2)(f) and 21(2)(h) are relevant with respect to the personal information of individuals other than the appellant, except for information which directly addresses the substance of the complaint and the findings.

- (2) Although the identity of the complainant is known to the appellant, I find that in the particular circumstances of this appeal, her name and other information in the records which could identify her is highly sensitive. I am led to this conclusion by the nature of the complainant's involvement in the criminal justice system, which involved proceedings under the Young Offenders Act. Accordingly, the factor in section 21(2)(f) is also relevant with respect to this information.
- (3) The appellant has not provided any evidence to indicate that there is a legal right which relates to an existing or contemplated proceeding, nor has he demonstrated that the information has any bearing on or significance to the right in question. In addition, he has not demonstrated that the information is required to prepare for any proceeding relating to the right, nor that it is necessary to ensure an impartial hearing in that regard. I therefore find that section 21(2)(d) is not a relevant consideration in this appeal (Order P-312).
- (4) I find that sections 21(4) and 23 do not apply in the circumstances of this appeal.
- (5) Accordingly, the exemption in section 49(b) applies to parts of the severed portion of the investigation report and the attached witness statement. I have highlighted the parts of the records to which this exemption applies on the copy of the records which is being sent to the Ministry's
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Freedom of Information and Privacy Co-ordinator with a copy of this order. These highlighted portions should **not** be disclosed.

ORDER:

1. I uphold the Ministry's decision to deny access to the portions of the records which are highlighted on the copy of the records which is being sent to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I order the Ministry to disclose the remaining portions of the records to the appellant within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
John Higgins
Inquiry Officer

_____ October 18, 1994